

Exhibit D

(Original filed with court security)

Case No. 05-4761

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**UNITED STATES OF AMERICA,
Plaintiff – Appellee,**

v.

**ALI AL-TIMIMI
Defendant – Appellant.**

**DECLARATION OF EDWARD B. MACMAHON, JR.
IN SUPPORT OF APPELLANT’S MOTION TO REMAND**

Jonathan Turley
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*Counsel representing Appellant
Dr. Ali Al-Timimi*

February 15, 2006

**DECLARATION OF EDWARD B. MACMAHON, JR.
IN SUPPORT OF APPELLANT'S MOTION TO REMAND**

I, Edward B. MacMahon, Jr., hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746(2), the following facts and statements:

1. I am a Virginia Bar member (No. 25432) with an office at 107 East Washington Street, P.O. Box 903, Middleburg, Virginia 20118.
2. Until 2005, I served as lead trial counsel to Dr. Ali Al-Timimi in the case leading to this appeal.
3. After the trial in 2005, Professor Jonathan Turley agreed to take over the case as lead counsel, but I have been supplying trial documents and files in support of the appeal.
4. During my representation of Dr. Al-Timimi, I was given access to classified and unclassified intercept evidence and related material.
5. At no time did the government reveal the existence of the NSA domestic surveillance program recently confirmed by President Bush.
6. Before and during his trial, I asked the government in writing for any intercepts of his communications as well as those of key witnesses and figures in the alleged conspiracy, including but not limited to Masoud Khan, Randall Royer, Yong Kwon, Muhammad Aatique, Khwaja Hasan, Donald Surratt, Safer al-Hawali, and Jafaar Idris.

7. Considering the confirmed aspects of the NSA program, I believe that there are compelling reasons to believe that Dr. Al-Timimi and/or material witnesses were intercepted under that program.
8. The government repeatedly asserted that Dr. Al-Timimi had ties to Al Qaeda.
9. Indeed, in September 2001, the FBI interviewed Dr. Al-Timimi and accused him of having knowledge of the 9-11 attacks.
10. In September 2001, Dr. Al-Timimi had telephone contacts with Muslims in Saudi Arabia who the government alleged had ties to Al Qaeda.
11. In 2001, 2002 and 2003, Dr. Al-Timimi routinely made international calls to Pakistan, Saudi Arabia and other nations in the Middle East.
12. At trial the government introduced evidence pursuant to FISA warrants, which I now have reason to believe were the result of warrantless searches, which were unknown to the defense at the time of trial.
13. Had this operation been revealed to me before the appeal in this case, I would have sought additional discovery and requested evidentiary hearings. I believe that such a hearing is necessary to complete the record in this case.

14. Pursuant to 28 U.S.C. § 1746(2), I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge information, and belief.

/s/

Edward B. MacMahon, Jr.
107 East Washington Street, P.O. Box 903
Middleburg, Virginia 20018
(504) 687-3902

Executed on February 15, 2006